

EO-414

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Economics, Environmental Analysis, and Administration

January 19, 2007

Don L. Klima, Director
Office of Planning and Review
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW
Suite 809
Washington, DC 20004

Re: STB Docket No. AB 167 (Sub-No. 1095X), Consolidated Rail Corporation – Abandonment Exemption – in Lancaster and Chester Counties, PA – expiration of Memorandum of Agreement (MOA) and execution of new MOA

Dear Mr. Klima:

For the reasons explained below, the Memorandum of Agreement (MOA) executed for the above-captioned abandonment expired before the signatories became aware of the impending expiration date. The signatories, including the Surface Transportation Board's (Board) Section of Environmental Analysis (SEA), are interested in executing a new MOA to replace the one that has expired. SEA has consulted with Ms. Katry Harris of your staff on the appropriate next steps leading to execution of a new MOA. I am writing you at Ms. Harris's suggestion to bring you up to date on the current status of this matter.

Project Background

Following a remand by the Third Circuit Court of Appeals, SEA negotiated an MOA setting out appropriate historic preservation mitigation for this proceeding. The executed MOA was filed with the Advisory Council on Historic Preservation (ACHP) on August 4, 2004. The filing of the executed MOA completed the historic review process in this case and demonstrated the Board's compliance with the National Historic Preservation Act and the court's decision. See 36 CFR 800.6 (c).

During preparation of the above referenced MOA, Norfolk Southern Railway Company (NSR) requested that the expiration date be changed from three years to one year. NSR states that it requested this shortened time frame in order to facilitate completion of its responsibilities set out in the MOA. However, as a result of subsequent litigation brought by Lancaster County (County) seeking to acquire the Line through eminent domain as well as its affirmative statements indicating that it, not NSR, would be responsible for fulfilling the requirements outlined in the MOA, the MOA expired.¹

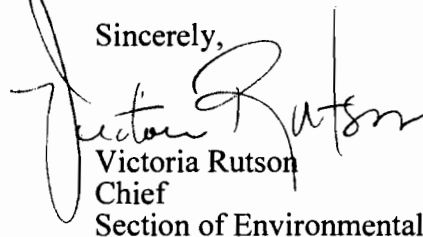
¹ In furtherance of this effort, on June 16, 2004, the County filed a declaration of taking in the Common Pleas Court of Lancaster County, Pennsylvania. The County states that it has decided to use its powers of eminent domain in an effort to acquire and preserve the Line for recreational trail purposes. Moreover, in a letter dated November 17, 2004, Lancaster County filed a Motion with the Board to Remove Historic Preservation Conditions and to Grant Final Abandonment Authority to Norfolk Southern Railway Company (NSR) in order to terminate the

However, on October 30, 2006, the Pennsylvania Commonwealth Court (Court) ruled that the County cannot seize the Line by eminent domain. Furthermore, the Court found 1) that the County does not have legal authority under County Code to take land owned by a railroad and 2) that the County's attempt to take the Line would violate a prior order by the Pennsylvania Public Utilities Commission allowing the Townships to accept the Line from NSR.²

Therefore, as a result of the actions by the County and the subsequent litigation, the executed MOA lapsed. After consulting with Ms. Harris, SEA is planning to work with the ACHP, SHPO, NSR, and other identified consulting parties to ensure execution of a new MOA.

If you have any questions or concerns regarding this notification, please feel free to contact Mr. Troy Brady of my staff at (610) 793-4301 or via e-mail at Troy.Brady@stb.dot.gov. Thank you for your assistance in this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with a large initial "V" and "R".

Victoria Rutson
Chief
Section of Environmental Analysis

Board's jurisdiction in this proceeding. The County goes on to state in part that "...Lancaster County has agreed to undertake historic preservation activities required under the terms of the Memorandum of Understanding executed by various parties in this proceeding thereby assuring that the historic review and preservation goals of that MOU will be observed in accordance with the National Historic Preservation Act..."

On February 25, 1997, Consolidated Rail Corporation (Conrail) entered into a Stipulation of Settlement (Agreement) between Conrail and the Lancaster County Pennsylvania Townships of Conestoga, Martic, Providence, Eden, Bart, and Sadsbury and the Chester County Township of West Sadsbury. In this Agreement, Conrail agreed to convey the real property comprising the Enola Branch Rail Line (Line) that was located in each Township, except certain property in Conestoga Township beyond Milepost 27.0 and the property in West Sadsbury, to the respective Townships.

² On October 9, 1997, The Pennsylvania Public Utilities Commission approved Stipulation of Settlement (Agreement) allowing the Townships to take ownership of the Line. This Agreement was affirmed on appeal to the Supreme Court of Pennsylvania on June 29, 1999.

cc: **Signatories:**

Susan Zacher, PA SHPO
James R. Paschass, NSR

Concurring Parties:

Joyce Nettke, FAST
Timothy Smedick, Historic Preservation Trust of Lancaster County
Lancaster County Commissioners
Ralph Goodno, Lancaster County Conservancy
Karen Martynick, Lancaster Farmland Trust
Northeast Regional Field Office of the Rails-to-Trails Conservancy
Pennsylvania Department of Transportation
Mike Reynolds, Southern End Community Association
Alfred Drayovitch, Jr., Quarryville Borough
Calvin Keene, Township of Bart
Craig Eshleman, Township of Conestoga
Ellis Ferguson, Township of Eden
Thomas Irwin, Township of Martic
C. William Shaffer, Township of Providence
Daniel Roth, Township of Sadsbury
James Landis, Township of West Sadsbury